

HB 781 INTRODUCED BY COHEN
CREATING FOREST WATERSHED MANAGEMENT ACT

2/16 INTRODUCED
2/16 REFERRED TO NATURAL RESOURCES
2/16 FISCAL NOTE REQUESTED
2/20 HEARING
2/23 FISCAL NOTE RECEIVED
3/06 HEARING
3/09 TABLED IN COMMITTEE

1 House BILL NO. 781
2 INTRODUCED BY [Signature]

3
4 A BILL FOR AN ACT ENTITLED: "THE FOREST WATERSHED
5 MANAGEMENT ACT; PROVIDING FOR BINDING COOPERATIVE AGREEMENTS
6 BETWEEN THE DEPARTMENT OF STATE LANDS AND OWNERS OF FOREST
7 LAND; REQUIRING THE DEPARTMENT OF STATE LANDS TO ADOPT AND
8 ENFORCE STANDARDS FOR TIMBER HARVEST OPERATIONS; AND
9 PROVIDING THAT FOREST LAND UNDER A COOPERATIVE AGREEMENT BE
10 CONSIDERED GRAZING LAND FOR THE PURPOSES OF TAX
11 CLASSIFICATION AND DETERMINATION OF TAXABLE VALUE; AMENDING
12 SECTIONS 15-6-143, 15-7-201, AND 15-7-202, MCA; AND
13 PROVIDING EFFECTIVE DATES."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
16 NEW SECTION. Section 1. Short title. [Sections 1
17 through 7] may be known and cited as the "Forest Watershed
18 Management Act".

19 NEW SECTION. Section 2. Policy. Recognizing that
20 state and private forest lands make a vital contribution to
21 Montana by providing employment, products, tax base, and
22 other social and economic benefits; by helping to maintain
23 timber, soil, and water resources; and by providing habitat
24 for wildlife and aquatic life; and further recognizing that
25 land management activities can alter the runoff

1 characteristics of a watershed and affect water quality, it
2 is the policy of the state to encourage best management
3 practices for forestry in Montana for the protection of
4 watersheds and forest lands in Montana.

5 NEW SECTION. Section 3. Definitions. The following
6 definitions apply to [sections 1 through 7]:

7 (1) "Best management practices" means a practice or
8 combination of practices for timber harvest operations that
9 are determined by the department after problem assessment,
10 examination of alternative practices, and appropriate public
11 participation, to be the most effective and practical means
12 of preventing or reducing the introduction of sediments or
13 other pollutants into state waters.

14 (2) "Board" means the board of land commissioners.

15 (3) "Department" means the department of state lands.

16 (4) "Forest land" means state land and private land
17 growing forest tree species that are or could be capable of
18 furnishing raw materials in the manufacture of wood
19 products. Forest land includes land from which the forest
20 tree species have been removed but have not been restocked,
21 but the term does not include lands affirmatively converted
22 to uses other than the growing of trees or lands used for
23 the growing of Christmas trees or nursery trees that are
24 cultivated, hoed, sheared, or cultured during the period of
25 growth.



1 (5) "Landowner" means an owner of forest land, except
2 that landowner means the timber owner if ownership of the
3 timber has been severed from land ownership rights.

4 (6) "Operation" means an activity relating to the
5 commercial harvesting of trees and includes logging
6 operations, road construction or reconstruction,
7 reforestation, and slash disposal. The term does not
8 include the removal of trees for personal use of the
9 landowner, timber owner, or lessee.

10 (7) "Violation" means a violation of [sections 1
11 through 7], the terms of a binding cooperative agreement
12 entered into under [section 4], a rule adopted under
13 [section 5], or an order of the department.

14 NEW SECTION. Section 4. Binding cooperative
15 agreements. (1) A landowner may voluntarily enter into a
16 binding cooperative agreement with the department for the
17 conduct of operations.

18 (2) The term of an agreement is 10 years. The
19 agreement may be renewed by mutual consent of the parties.

20 (3) A binding cooperative agreement must include:

21 (a) specific management practices that will be applied
22 to reduce adverse effects of timber harvest on water quality
23 and aquatic ecosystems;

24 (b) procedures for monitoring operations that have a
25 potential to affect watersheds; and

1 (c) procedures for notification about operations.

2 (4) A landowner entering into such an agreement shall
3 comply with the terms of the agreement, but is exempt from
4 compliance with other departmental rules for notification
5 adopted under [section 5]. In addition, the department may
6 only enforce standards for management practices that are
7 specifically contained in the binding cooperative agreement;
8 the department may not enforce other management standards
9 adopted under [section 5].

10 (5) The department shall encourage the coordinated
11 management of land within a watershed and may develop and
12 propose a single binding cooperative agreement that may be
13 entered into by all landowners within a watershed.

14 (6) The department shall seek the participation and
15 cooperation of tribal and federal land managers in the
16 implementation of binding cooperative agreements.

17 NEW SECTION. Section 5. Powers and duties of the
18 department. (1) The department, in consultation with
19 interested landowners, logging operators, state agencies,
20 and other interested persons, shall adopt rules:

21 (a) providing for the development and execution of
22 binding cooperative agreements that may be entered into
23 voluntarily by a landowner and the department, as provided
24 for in [section 4];

25 (b) requiring landowners to notify the department of

1 planned operations prior to commencement;

2 (c) exempting owners of 40 or fewer acres of forest
3 land from regulation under [sections 1 through 7]; however,
4 the rules must extend eligibility to owners of more than 20
5 acres of forest land for entrance into binding cooperative
6 agreements and, upon such entrance, for access to the
7 benefits provided in [section 7];

8 (d) establishing best management practices for
9 operations on forest lands. Best management practices must
10 include minimum enforceable standards for the following
11 activities as they relate to watershed protection:

12 (i) timber harvesting and reforestation;

13 (ii) road construction;

14 (iii) slash treatment and site preparation; and

15 (iv) protection of streamside and lakeshore zones;

16 (e) requiring landowners to comply with best
17 management practices; and

18 (f) providing a procedure for waiver of penalty as
19 provided for in [section 6].

20 (2) The department shall administer and enforce the
21 provisions of [sections 1 through 7], rules implementing
22 [sections 1 through 7], and the terms of binding cooperative
23 agreements entered into under the provisions of [section 4].
24 In pursuing enforcement actions, the department may issue
25 administrative orders and enter upon public or private

1 lands, after reasonable notice, to investigate compliance.

2 (3) The department may:

3 (a) enter into agreements with federal, state, or
4 local agencies or private entities to assist in implementing
5 the provisions or the purpose of [sections 1 through 7]; and

6 (b) prescribe procedures, forms, and requirements for
7 the administration of [sections 1 through 7].

8 NEW SECTION. Section 6. Violation -- penalty --
9 waiver. (1) Except as provided in subsection (2), a person
10 who violates any of the provisions of [sections 1 through
11 7], rules or orders adopted under [sections 1 through 7], or
12 term or condition of an agreement and any director, officer,
13 or agent of a corporation who willfully authorizes, orders,
14 or carries out a violation shall pay a civil penalty of not
15 less than \$100 or more than \$5,000 for the violation and an
16 additional civil penalty of not less than \$100 or more than
17 \$5,000 for each day during which a violation continues and
18 may be enjoined from continuing such violations through an
19 action filed in district court by the department. Any person
20 who fails to correct a violation within the period permitted
21 by law, rule of the department, or order of the commissioner
22 of state lands must be assessed a penalty of not less than
23 \$750 for each day during which such failure or violation
24 continues.

25 (2) The department may waive the civil penalty for a

1 minor violation of [sections 1 through 7], a rule or order
 2 adopted under [sections 1 through 7], or a term or condition
 3 of an agreement if the department determines such violation
 4 is not of potential harm to public health, public safety, or
 5 the environment and does not impair the administration of
 6 [sections 1 through 7].

7 (3) The department shall notify the person of the
 8 violation. The person shall by filing a written request
 9 within 20 days of receipt of the notice of violation be
 10 entitled to a hearing on the issues of whether the alleged
 11 violation has occurred and whether the penalty proposed to
 12 be assessed is proper. The department shall issue a
 13 statement of proposed penalty no more than 10 days after
 14 notice of violation. After the hearing or after the time for
 15 requesting a hearing has expired, the board shall make
 16 findings of fact and shall issue a written decision as to
 17 the occurrence of the violation and the amount of penalty
 18 warranted and shall order the payment of a penalty in that
 19 amount. The person shall remit the amount of the penalty
 20 within 30 days of the order. If the person wishes to obtain
 21 judicial review of the assessment, he shall submit with the
 22 penalty a statement that the penalty is being paid under
 23 protest and the department shall hold the payment in escrow
 24 until judicial review is complete. Any person who fails to
 25 request and submit testimony at the hearing provided for in

1 this subsection or who fails to pay the assessed penalty
 2 under protest within 30 days of the order assessing the
 3 penalty forfeits his right to seek judicial review of the
 4 violation or penalty determinations. These penalties are
 5 recoverable in any action brought in the name of the state
 6 of Montana by the attorney general in the district court of
 7 the first judicial district of this state, in and for the
 8 county of Lewis and Clark, or the district having
 9 jurisdiction over the defendant.

10 NEW SECTION. Section 7. Effect of binding cooperative
 11 agreement on property tax classification and taxable value.
 12 (1) Forest land subject to the terms of a binding
 13 cooperative agreement entered into by the landowner and the
 14 department must be treated as grazing land for the purposes
 15 of property tax classification and determination of taxable
 16 value.

17 (2) If the landowner subsequently withdraws from the
 18 agreement, he shall reimburse the county treasurer for the
 19 difference between the property taxes paid and the property
 20 taxes that would have been paid had the land been assessed
 21 as timberland, plus interest at the rate of 5/6 of 1% per
 22 month and a 10% penalty.

23 Section 8. Section 15-6-143, MCA, is amended to read:
 24 "15-6-143. (Effective January 1, 1986) Class thirteen
 25 property -- description -- taxable percentage. (1) Class

1 thirteen property includes all timberland, except as
2 provided in [section 7].

3 (2) Timberland is contiguous land exceeding 15 acres
4 in one ownership that is capable of producing timber that
5 can be harvested in commercial quantity.

6 (3) Class thirteen property is taxed at the percentage
7 rate "P" of the combined appraised value of the standing
8 timber and grazing productivity of the property.

9 (4) For taxable years beginning January 1, 1986, and
10 thereafter, the taxable percentage rate "P" applicable to
11 class thirteen property is $30\%/B$, where B is the certified
12 statewide percentage increase to be determined by the
13 department of revenue as provided in subsection (5). The
14 taxable percentage rate "P" shall be rounded downward to the
15 nearest 0.01% and shall be calculated by the department
16 before July 1, 1986.

17 (5) (a) Prior to July 1, 1986, the department shall
18 determine the certified statewide percentage increase for
19 class thirteen property using the formula $B = X/Y$, where:

20 (i) X is the appraised value, as of January 1, 1986,
21 of all property in the state, excluding use changes
22 occurring during the preceding year, classified under class
23 thirteen as class thirteen is described in this section; and

24 (ii) Y is the appraised value, as of January 1, 1985,
25 of all property in the state that, as of January 1, 1986,

1 would be classified under class thirteen as class thirteen
2 is described in this section.

3 (b) B shall be rounded downward to the nearest
4 0.0001%.

5 (6) After July 1, 1986, no adjustment may be made by
6 the department to the taxable percentage rate "P" until a
7 valuation has been made as provided in 15-7-111.
8 (Terminates January 1, 1991--sec. 10, Ch. 681, L. 1985.)"

9 Section 9. Section 15-7-201, MCA, is amended to read:
10 "15-7-201. (Temporary -- effective January 1, 1986 --
11 applicable to 1986 land valuation schedules) Legislative
12 intent -- value of agricultural property. (1) Since the
13 market value of many agricultural properties is based upon
14 speculative purchases which do not reflect the productive
15 capability of agricultural land, it is the legislative
16 intent that bona fide agricultural properties shall be
17 classified and assessed at a value that is exclusive of
18 values attributed to urban influences or speculative
19 purposes.

20 (2) Agricultural land shall be classified according to
21 its use, which classifications shall include but not be
22 limited to irrigated use, nonirrigated use, and grazing use.
23 Agricultural land includes timberland subject to a binding
24 cooperative agreement under the provisions of [sections 4
25 and 7]; this land must be classified as grazing use. Except

1 as provided in subsections (3) and (4), within each class of
2 agricultural land, such land shall be assessed at a value
3 that is fairly based on its ability to produce.

4 (3) Capital costs such as improved water distribution,
5 fertilizer, and land shaping that increase productivity
6 shall not be used in determining assessed values.

7 (4) For the revaluation beginning January 1, 1986, the
8 department of revenue shall continue to use the agricultural
9 land valuation schedules in effect on January 12, 1984,
10 except that irrigated land values shall be revised, taking
11 noncapital water distribution costs into consideration.
12 However, at no time may the value of irrigated land be below
13 the value such land would have if it were not irrigated.

14 15-7-201. (Effective January 1, 1986 -- applicable to
15 1991 land valuation schedules) Legislative intent -- value
16 of agricultural property. (1) Since the market value of many
17 agricultural properties is based upon speculative purchases
18 which do not reflect the productive capability of
19 agricultural land, it is the legislative intent that bona
20 fide agricultural properties shall be classified and
21 assessed at a value that is exclusive of values attributed
22 to urban influences or speculative purposes.

23 (2) Agricultural land shall be classified according to
24 its use, which classifications shall include but not be
25 limited to irrigated use, nonirrigated use, and grazing use.

1 Agricultural land includes timberland subject to a binding
2 cooperative agreement under the provisions of [sections 4
3 and 7]; this land must be classified as grazing use.

4 (3) Within each class, land shall be assessed at a
5 value that is fairly based on its productive capacity.

6 (4) In computing the agricultural land valuation
7 schedules to take effect on January 1, 1991, or on the date
8 that the revaluation cycle commencing January 2, 1986, takes
9 effect pursuant to 15-7-111, the department of revenue shall
10 determine the productive capacity value of all agricultural
11 lands using the formula $V = I/R$ where:

12 (a) V is the per-acre productive capacity value of
13 agricultural land in each land use and production category;

14 (b) I is the per-acre net income of agricultural land
15 in each land use and production category and is to be
16 determined by the department using the formula $I = (P - C) U$
17 where:

18 (i) I is the per-acre net income;

19 (ii) P is the per-unit price of the commodity being
20 produced;

21 (iii) C is the per-unit production cost of the
22 commodity being produced; and

23 (iv) U is the yield in units per acre; and

24 (c) R is the capitalization rate to be determined by
25 the department as provided in subsection (9).

1 (5) Net income shall be:

2 (a) calculated for each year of a base period, which
3 is the most recent 3-year period for which data are
4 available, prior to a revaluation of property as provided in
5 15-7-111; and

6 (b) based on commodity price and production cost data
7 for the base period from such sources as may be considered
8 appropriate by the department, which sources shall include
9 Montana state university.

10 (6) To the degree available, the department shall
11 compile:

12 (a) commodity price data reflecting the average prices
13 received per unit of measure by Montana farmers and
14 ranchers. Such data may be obtained from all geographical
15 areas of the state. Commodity prices may include wheat,
16 barley, alfalfa hay, grass hay, corn for grain, corn for
17 silage, sugar beets, dry beans, potatoes, cattle, and sheep.
18 Government payments may be considered. Typical rental
19 arrangements may be considered.

20 (b) production cost data reflecting average costs per
21 unit of measure paid by Montana farmers and ranchers. Such
22 data may be obtained from all geographical areas of the
23 state. Such production costs may include costs relating to
24 irrigation, fertilization, fuel, seed, weed control, hired
25 labor, management, insurance, repairs and maintenance, and

1 miscellaneous items. Variations in specific production cost
2 data, when affected by different levels of production, and
3 typical rental arrangements may be considered.

4 (7) The department shall appoint an advisory committee
5 of persons knowledgeable in agriculture and agricultural
6 economics to review the data prepared by Montana state
7 university and advise the department on the implementation
8 of subsections (2) through (6). The advisory committee shall
9 include one member of the Montana state university staff.

10 (8) Net income shall be determined separately for
11 lands in irrigated use, nonirrigated use, and grazing use
12 and shall be calculated for each use and production level
13 according to the provisions of subsections (4) through (7).

14 (9) The capitalization rate shall be calculated for
15 each year of the base period and is the annual average
16 interest rate on agricultural loans as reported by the
17 federal land bank association of Spokane, Washington, plus
18 the effective tax rate in Montana.

19 (10) The effective tax rate shall be calculated by the
20 department for each year of the base period by dividing the
21 total estimated tax due on agricultural land in the state by
22 the total productive capacity value of agricultural land in
23 the state."

24 Section 10. Section 15-7-202, MCA, is amended to read:

25 "15-7-202. Eligibility of land for valuation as

1 agricultural. (1) Contiguous parcels of land totaling 20
2 acres or more under one ownership shall be eligible for
3 valuation, assessment, and taxation as agricultural land
4 each year that none of the parcels is devoted to a
5 commercial or industrial use.

6 (2) Contiguous or noncontiguous parcels of land
7 totaling less than 20 acres under one ownership that are
8 actively devoted to agricultural use shall be eligible for
9 valuation, assessment, and taxation as herein provided each
10 year the parcels meet any of the following qualifications:

11 (a) the parcels produce and the owner or the owner's
12 agent, employee, or lessee markets not less than \$1,500 in
13 annual gross income from the raising of livestock, poultry,
14 field crops, fruit, and other animal and vegetable matter
15 for food or fiber; or

16 (b) the parcels would have met the qualification set
17 out in subsection (2)(a) were it not for independent
18 intervening causes of production failure beyond the control
19 of the producer or marketing delay for economic advantage,
20 in which case proof of qualification in a prior year will
21 suffice.

22 (3) Parcels that do not meet the qualifications set
23 out in subsections (1) and (2) shall not be classified or
24 valued as agricultural if they are part of a platted
25 subdivision that is filed with the county clerk and recorder

1 in compliance with the Montana Subdivision and Platting Act.

2 (4) Land shall not be classified or valued as
3 agricultural if it is subdivided with stated restrictions
4 prohibiting its use for agricultural purposes.

5 (5) The grazing on land by a horse or other animals
6 kept as a hobby and not as a part of a bona fide
7 agricultural enterprise shall not be considered a bona fide
8 agricultural operation.

9 (6) If land has been valued, assessed, and taxed as
10 agricultural land in any year, it shall continue to be so
11 valued, assessed, and taxed until the department
12 reclassifies the property. A reclassification does not mean
13 revaluation pursuant to 15-7-111.

14 (7) For the purposes of this part, growing timber is
15 not an agricultural use, except as provided in [section 7].
16 (Subsection (6) (now (7)) terminates January 1, 1991--sec.
17 10, Ch. 681, L. 1985.)"

18 NEW SECTION. Section 11. Effective dates. (1)
19 Sections 1 through 7 and this section are effective October
20 1, 1987.

21 (2) Sections 8 through 10 are effective January 1,
22 1988.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB781, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

The forest watershed management act; providing for binding cooperative agreements between the Department of State Lands and owners of forest land; requiring the Department of State Lands to adopt and enforce standards for timber harvest operations; and providing that forest land under a cooperative agreement be considered grazing land for the purposes of tax classification and determination of taxable value; and providing effective dates.

ASSUMPTIONS:Revenues

1. In tax year 1986 the taxable value of timberland was \$6,600,000. (Adjusted from the figure published in the Montana Department of Revenue Biennial Report, 1984 - 1986.)
2. The maximum loss in taxable value if all this timberland was valued as grazing land would be \$3,067,706.
3. Average mill levy for timberland of 250 mills: university levy - 6 mills; school foundation program - 45 mills; and local governments - 199 mills.
4. The property tax valuation section of the bill is effective January 1, 1988, so there is no impact in FY88.

Expenditures

1. Bill creates a new responsibility for the Department of State Lands.
2. Department of State Lands will be required to inspect approximately 1,000 individual harvest operations on private lands annually.
3. There are about 10,000 private landowners with over 40 acres of forest land, totalling over 5 million acres.
4. There are an additional 6,000 landowners with between 20 and 40 acres who would be eligible to sign cooperative agreements.
5. It will require an additional 13.0 FTE to properly administer this inspection program, including the coordination of harvest activities on 1.8 million acres of industrial forest land, 600,000 acres of State Forest Land, as well as the approximately 3.5 million acres in non-industrial private ownership.

FISCAL IMPACT:Expenditures:

	<u>FY88</u>	<u>FY89</u>
Department of State Lands	\$286,903	\$310,049

Revenues:

The maximum possible revenue loss in FY89 would be \$18,406 for the university levy and \$138,047 for the school foundation program.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

The maximum possible revenue loss in FY89 to local governments would be \$610,473.

David L. Hunter DATE 2/23/87

DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

Ben Cohen DATE 3/2/87
BEN COHEN, PRIMARY SPONSOR

Fiscal Note for HB781, as introduced.

HB 781